

§ 791.39

the award the delivery of the award or a true copy thereof by certified mail to the party at its last known address or to its attorney, or by personal service.

§ 791.39 Fees and expenses.

(a) *Administrative fees.* (1) As a not-for-profit organization, the American Arbitration Association shall prescribe an Administrative Fee Schedule and a Refund Schedule to compensate it for the cost of providing administrative services. The schedule in effect at the time of filing or the time of refund shall be applicable.

(2) The administrative fees shall be advanced by the initiating party or parties, subject to final apportionment by the hearing officer in the award. The administrative fee is increased by 10 percent of the original for each additional party.

(3) Fees and expenses in excess of the limit contained in section 26(b) of TSCA (\$2,500 per person, or \$100 per small business) will be paid by EPA.

(b) *Expenses.* Subject to paragraph (a)(3) of this section, all expenses of the hearing, including the cost of recording (though not transcribing) the hearing and required traveling and other expenses of the hearing officer and of American Arbitration Association representatives, and the expenses of any witness or the cost of any proofs produced at the direct request of the hearing officer, shall be borne equally by the parties, unless they agree otherwise, or unless the hearing officer, in the award, assesses such expenses or any part thereof against any specified party or parties.

(c) *Hearing officer's fee.* Hearing officers will normally serve without a fee. In prolonged or special cases the American Arbitration Association in consultation with the Administrator may determine that payment of a fee by the parties is appropriate and may establish a reasonable amount, taking into account the extent of service by the hearing officer and other relevant circumstances of the case. Any arrangements for compensation shall be made through the American Arbitration Association and not directly between the parties and the hearing officer.

40 CFR Ch. I (7-1-12 Edition)

Subpart C—Basis for Proposed Order

§ 791.40 Basis for the proposed order.

(a) The hearing officer shall propose a fair and equitable amount of reimbursement. The formula in paragraph (b) of this section shall be presumed to be fair and equitable as applied to all persons subject to a test rule. However, the hearing officer has the discretion to modify the formula, or to use some other basis for allocation if necessary. Additional factors that may be taken into account include, but are not limited to, relative amounts of exposure attributable to each person and the effect of the reimbursement share on competitive position.

(b) In general, each person's share of the test cost shall be in proportion to its share of the total production volume of the test chemical:

$$R_x = C \frac{V_x}{V_t}$$

Where:

R=the reimbursement share owed by company X.

C=the total cost of the testing required by the test rule.

V_x=the volume of the test chemical produced or imported by company X over the period defined by § 791.48.

V_t=the total volume of the test chemical produced or imported over the period defined by § 791.48.

(c) The burden of proposing modifications to the formula shall lie with the party requesting the modification.

§ 791.45 Processors.

(a) Generally, processors will be deemed to have fulfilled their testing and reimbursement responsibilities indirectly, through higher prices passed on by those directly responsible, the manufacturers. There are three circumstances in which processors will have a responsibility to provide reimbursement directly to those paying for the testing:

(1) When a test rule or subsequent FEDERAL REGISTER notice pertaining to a test rule expressly obligates processors as well as manufacturers to assume direct testing and data reimbursement responsibilities.